



DOUGLAS A. DUCEY  
GOVERNOR

STATE OF ARIZONA  
OFFICE OF THE GOVERNOR

EXECUTIVE OFFICE

March 27, 2018

The Honorable Michele Reagan  
Secretary of State  
1700 W. Washington, 7<sup>th</sup> Floor  
Phoenix, AZ 85007

Dear Secretary Reagan:

I am transmitting to you the following bills from the Fifty-third Legislature, 2<sup>nd</sup> Regular Session, which I signed on March 27, 2018:

HB 2034 social security; state agency designation (Livingston)  
HB 2053 sexual acts; theft by extortion (Syms)  
HB 2078 political subdivisions; candidate committee (Finchem)  
HB 2085 schools; emergency epinephrine administration (Carter)  
HB 2168 mobile homes; recreational vehicles; fund (Coleman)  
HB 2190 county improvement districts; repayment agreements (Mitchell)  
HB 2243 wrong-way driving; violation; DUI (Farnsworth, E.)  
HB 2247 criminal justice commission; reporting requirements (Farnsworth, E.)  
HB 2312 setting aside conviction; requirements (Farnsworth, E.)  
HB 2404 taxidermy; registry (Mosley)  
HB 2460 charter schools; vacant buildings; equipment (Leach)  
HB 2461 zoning regulations; private schools (Leach)  
HB 2633 pharmacists; controlled substances (Cobb)  
SB 1375 contractor licensure (Fann)  
SB 1423 common school districts; lapsing; procedure (Griffin)

Sincerely,

Douglas A. Ducey  
Governor  
State of Arizona

cc: Senate Secretary  
Chief Clerk of the House of Representatives  
Arizona News Service

House Engrossed

**FILED**

**MICHELE REAGAN**

**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-third Legislature  
Second Regular Session  
2018

**CHAPTER 83**

# **HOUSE BILL 2312**

AN ACT

AMENDING SECTION 13-907, ARIZONA REVISED STATUTES; RELATING TO SETTING  
ASIDE A CONVICTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-907, Arizona Revised Statutes, is amended to  
3 read:

4 13-907. Setting aside judgment of convicted person on  
5 discharge; application; release from disabilities;  
6 firearm possession; exceptions

7 A. Except as provided in subsection ~~F~~ K of this section, every  
8 person convicted of a criminal offense, on fulfillment of the conditions  
9 of probation or sentence and discharge by the court, may apply to the  
10 ~~judge, justice of the peace or magistrate who pronounced sentence or~~  
11 ~~imposed probation or such judge, justice of the peace or magistrate's~~  
12 ~~successor in office~~ COURT to have the judgment of guilt set aside. The  
13 convicted person shall be informed of this right at the time of ~~discharge~~  
14 SENTENCING.

15 B. The ~~convicted~~ person or, ~~if authorized in writing,~~ the ~~convicted~~  
16 person's attorney or probation officer may apply to set aside the  
17 judgment. THE CLERK OF THE COURT MAY NOT CHARGE A FILING FEE FOR AN  
18 APPLICATION TO HAVE A JUDGMENT OF GUILT SET ASIDE.

19 C. THE COURT SHALL CONSIDER THE FOLLOWING FACTORS WHEN DETERMINING  
20 WHETHER TO SET ASIDE THE CONVICTION:

21 1. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE THAT THE CONVICTION  
22 IS BASED ON.

23 2. THE APPLICANT'S COMPLIANCE WITH THE CONDITIONS OF PROBATION, THE  
24 SENTENCE IMPOSED AND ANY STATE DEPARTMENT OF CORRECTIONS' RULES OR  
25 REGULATIONS, IF APPLICABLE.

26 3. ANY PRIOR OR SUBSEQUENT CONVICTIONS.

27 4. THE VICTIM'S INPUT AND THE STATUS OF VICTIM RESTITUTION, IF ANY.

28 5. THE LENGTH OF TIME THAT HAS ELAPSED SINCE THE COMPLETION OF THE  
29 APPLICANT'S SENTENCE.

30 6. THE APPLICANT'S AGE AT TIME OF THE CONVICTION.

31 7. ANY OTHER FACTOR THAT IS RELEVANT TO THE APPLICATION.

32 ~~C.~~ D. If the ~~judge, justice of the peace or magistrate grants the~~  
33 application IS GRANTED, the ~~judge, justice of the peace or magistrate~~  
34 COURT shall set aside the judgment of guilt, dismiss the ~~accusations or~~  
35 COMPLAINT, information OR INDICTMENT and order that the person be released  
36 from all penalties and disabilities resulting from the conviction except  
37 those imposed by:

38 1. The department of transportation pursuant to section 28-3304,  
39 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 or 28-3319, ~~except that the~~  
40 ~~conviction may be used as a conviction if the conviction would be~~  
41 ~~admissible had it not been set aside and may be pleaded and proved in any~~  
42 ~~subsequent prosecution of such person by the state or any of its~~  
43 ~~subdivisions for any offense or used by the department of transportation~~  
44 ~~in enforcing section 28-3304, 28-3306, 28-3307, 28-3308 or 28-3319 as if~~  
45 ~~the judgment of guilt had not been set aside.~~

1           2. The game and fish commission pursuant to section 17-314 or  
2 17-340.

3           E. A CONVICTION THAT IS SET ASIDE MAY BE:

4           1. USED AS A CONVICTION IF THE CONVICTION WOULD BE ADMISSIBLE HAD  
5 IT NOT BEEN SET ASIDE.

6           2. ALLEGED AS AN ELEMENT OF AN OFFENSE.

7           3. USED AS A PRIOR CONVICTION.

8           4. PLEADED AND PROVED IN ANY SUBSEQUENT PROSECUTION OF THE PERSON  
9 BY THIS STATE OR ANY SUBDIVISION OF THIS STATE FOR ANY OFFENSE.

10          5. USED BY THE DEPARTMENT OF TRANSPORTATION IN ENFORCING SECTION  
11 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 OR 28-3319 AS IF THE  
12 JUDGMENT OF GUILT HAD NOT BEEN SET ASIDE.

13          F. THE CLERK OF THE COURT MUST NOTIFY THE DEPARTMENT OF PUBLIC  
14 SAFETY IF A CONVICTION IS SET ASIDE. THE DEPARTMENT OF PUBLIC SAFETY MUST  
15 UPDATE THE PERSON'S CRIMINAL HISTORY WITH AN ANNOTATION THAT THE  
16 CONVICTION HAS BEEN SET ASIDE BUT MAY NOT REDACT OR REMOVE ANY PART OF THE  
17 PERSON'S RECORD.

18          G. THIS SECTION DOES NOT:

19          1. REQUIRE A LAW ENFORCEMENT AGENCY TO REDACT OR REMOVE A RECORD OR  
20 INFORMATION FROM THE RECORD OF A PERSON WHOSE CONVICTION IS SET ASIDE.

21          2. PRECLUDE THE DEPARTMENT OF PUBLIC SAFETY OR THE BOARD OF  
22 FINGERPRINTING FROM CONSIDERING A CONVICTION THAT HAS BEEN SET ASIDE WHEN  
23 EVALUATING AN APPLICATION FOR A FINGERPRINT CLEARANCE CARD PURSUANT TO  
24 SECTION 41-1758.03 OR 41-1758.07.

25          H. IF THE COURT DENIES AN APPLICATION TO HAVE A JUDGMENT OF GUILT  
26 SET ASIDE, THE COURT SHALL STATE ITS REASONS FOR THE DENIAL IN WRITING AND  
27 ON THE RECORD.

28          I. A VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY  
29 PROCEEDING IN WHICH THE DEFENDANT HAS FILED AN APPLICATION TO HAVE A  
30 JUDGMENT OF GUILT SET ASIDE PURSUANT TO THIS SECTION. IF THE VICTIM HAS  
31 MADE A REQUEST FOR POSTCONVICTION NOTICE, THE ATTORNEY FOR THE STATE SHALL  
32 PROVIDE THE VICTIM WITH NOTICE OF THE DEFENDANT'S APPLICATION AND OF THE  
33 RIGHTS PROVIDED TO THE VICTIM IN THIS SECTION.

34          ~~D.~~ J. Notwithstanding section 13-905 or 13-906, if a ~~judgment of~~  
35 ~~guilt~~ CONVICTION is set aside pursuant to this section, the person's right  
36 to possess a gun or firearm is restored. This subsection does not apply  
37 to a person who was convicted of a serious offense as defined in section  
38 13-706.

39          ~~E.~~ K. This section does not apply to a person who was convicted of  
40 ~~a criminal offense~~ ANY OF THE FOLLOWING:

41           1. ~~involving~~ A dangerous offense.

42           2. AN OFFENSE for which the person is required or ordered by the  
43 court to register pursuant to section 13-3821.

44           3. AN OFFENSE for which there has been a finding of sexual  
45 motivation pursuant to section 13-118.



1           4. AN OFFENSE in which the victim is a minor under fifteen years of  
2 age.

3           5. AN OFFENSE in violation of section 28-3473, any local ordinance  
4 relating to stopping, standing or operation of a vehicle or title 28,  
5 chapter 3, except a violation of section 28-693 or any local ordinance  
6 relating to the same subject matter as section 28-693.

**APPROVED BY THE GOVERNOR MARCH 27, 2018**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2018**

Passed the House February 22, 20 18

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

[Signature]  
Speaker of the House  
☐ Pro Tempore

[Signature]  
Chief Clerk of the House

Passed the Senate March 21, 20 18

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

21<sup>st</sup> day of March, 20 18

at 6:39 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 27<sup>th</sup> day of

March 2018

at 11:40 o'clock A. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 27 day of March, 20 18

at 1:32 o'clock P. M.

[Signature]  
Secretary of State

H.B. 2312